

- IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

3. My attorney, Charles Weiner, Esquire, intervened and contacted NBME's counsel on August 27, 2019 and again on September 3, 2019 to inquire about the status of NBME's confirmation of the accommodations. (A copy of Mr. Weiner's emails are attached as Exhibit 1)

4. On September 4, 2019, NBME issued a letter confirming the accommodations. The accommodation included: a separate testing room, double (100%) additional testing time over two days, and additional off-the-clock break time (30 minutes each day). NBME indicated that the Day 1 appointment was for 9 hours 30 minutes and Day 2 appointment was for 9 hours 15 minutes. (A copy of NBME's September 4, 2019 letter is attached as Exhibit 2)

5. NBME further advised that their records showed that my registration for the Step 2 CK with the Educational Commission for Foreign Medical Graduates (ECFMG) had expired on June 30, 2019 and that I should contact ECFMG to extend my eligibility for the Step 2 CK. I was further advised to call Prometric to schedule the exam after receiving a scheduling permit.

6. On or about September 4, 2019, I contacted ECFMG to extend my eligibility for the Step 2 CK. ECFMG did not promptly extend my eligibility despite contacting ECFMG several times.

7. On September 19, 2019, Mr. Weiner intervened and wrote to ECFMG's General Counsel regarding the delays in certifying my eligibility and requested my eligibility be expedited. (A copy of Mr. Weiner's e-mail dated September 19, 2019 is attached as Exhibit 3)

8. On September 27, 2019, ECFMG approved my permit to take the Step 2 CK.

9. On October 2, 2019, I contacted NBME's affiliate, Prometric to schedule the Step 2 CK. I was advised that the first available dates to take the Step 2 CK within 100 miles of Cincinnati was on November 18 and 19, 2019 in Florence, Kentucky. I therefore, scheduled the exam for November 18 and 19, 2019.

10. On November 12, 2019, I contacted Prometric to make sure my test dates and accommodations were properly in place. The Prometric representative advised that their system reflected only double extended time was listed as the accommodation and that their system did not reflect provisions for 30 minute off-the-clock break time each day. I was further advised that the length of my appointment was 9 hours for the Day 1 and 8 hours 45 minutes for Day 2. I advised the Prometric representative that this was inconsistent with my accommodations letter from NBME. However, I was advised that the letter was insufficient and that NBME would need to make a change in their system.

11. The Prometric representative recommended that I reschedule the exam so that the accommodation discrepancy can be resolved. I was uncertain how long it would take for this to get resolved so I scheduled the Step 2 CK for December 27 and 28 in Fairborn, Ohio.

12. Mr. Weiner wrote to NBME's counsel advising him of the concerns regarding the various delays and implementation of accommodations. (A copy of Mr. Weiner's letter dated December 3, 2019 is attached as Exhibit 4).

13. During December, I became very sick and when it became clear to me that I would not be in good health for my exam date as scheduled I subsequently rescheduled my exam from December to January 27 and 29, 2020.

14. As of January 2020, it was evident that I was not going to be eligible to complete the normal application and interview process for the 2020 Residency Match Program. I rescheduled my exam from January 23, 2020 to March 21 and 23, 2020 in Fairborn, Ohio. I rescheduled the exam on these occasions due to the appeal to the Sixth Circuit and various briefing adjournments.

15. On March 17, 2020, I was advised by Prometric that my test appointment for March 21 and 23 were canceled due to COVID-19. No new date for the exam can be reschedule at this time as all Prometric testing centers in the USA and Canada are closed.

16. Since the District Court's Order granting the preliminary injunction, I have arduously prepared for the USMLE Step 2 CK. Preparation for the exam has included taking practice tests with provisions for accommodations including 100% extended time. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this twenty seventh day of March, 2020.



Brendan J. Berger